

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Millcreek Broadcasting, L.L.C.)	
)	
Licensee of Station KUUU-FM1)	File No. 99-DV-522
Salt Lake City, Utah)	
Facility ID # 86882)	
)	
Licensee of Station KUDD(FM))	File No. EB-00-DV-302
Roy, Utah)	
Facility ID # 33438)	
)	
Licensee of Station KUUU(FM))	File No. EB-01-DV-062
Tooele, Utah)	
Facility ID # 37876)	
)	
)	NAL/Acct. No. 200232800008
)	FRN 0004-8307-33

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 19, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Millcreek Broadcasting, L.L.C., ("Millcreek") licensee of Utah stations KUUU-FM1 in Salt Lake City, KUDD¹ in Roy, KUUU in Tooele, and KUDD-FM1 in Salt Lake City, apparently willfully violated Sections 11.35(a) and 74.1251 of the Commission's Rules ("Rules")² by failing to have operational Emergency Alert System ("EAS") equipment at the main FM stations KUUU and KUDD and by operating translator station KUUU-FM1 with an unauthorized transmission system at an unauthorized location and with excessive effective radiated power. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),³ that Millcreek is apparently liable for a forfeiture in the amount of twenty-two thousand dollars (\$22,000).

¹ The licensed call signs for stations KUDD and KUDD-FM1 were changed from KFVR-FM and KFVR-FM1, subsequent to the inspection on June 20, 2000. All references will be made to the current call signs KUDD and KUDD-FM1.

² 47 C.F.R. §§ 11.35(a) and 74.1251.

³ 47 U.S.C § 503(b).

II. BACKGROUND

2. On June 20, 2000, two Denver Office Agents inspected Millcreeks' co-located full power FM stations KUUU and KUDD and their respective booster stations KUUU-FM1 and KUDD-FM1. At the time of inspection, the main transmitters used by stations KUUU and KUDD, located in the Stansbury Mountains and Promontory Peak, respectively, were not operational. However, the booster station KUUU-FM1, located at a manned site on Farnsworth Peak, was operational, as was the auxiliary antenna facility used for KUDD, located at Ensign Peak. Both stations were rebroadcasting the programming of their respective main FM station.

3. At the time of inspection, EAS equipment, although present at the co-located facilities for stations KUUU and KUDD, was not installed or connected so as to be operational. Review of the station log maintained by KUDD and KUUU revealed that no required weekly test (RWT) and no required monthly test (RMT) had been received or sent by either station for the period April 30, 2000, through June 17, 2000. The station logs contained no annotation indicating EAS equipment failure or explaining the missed EAS RWTs and RMTs.

4. On March 9 and 12, 2001, the Denver Office issued Notices of Violation ("NOV") to Millcreek for the FCC rule violations detected at KUUU and KUDD during the inspection, including, among others, a violation of Section 11.35 of the Rules for failing to have EAS equipment installed and operational. On May 2, 2001, Millcreek responded to the NOV's. Millcreek acknowledged the violation of the EAS rules and stated that immediately following the FCC inspection the EAS system for KUUU and KUDD was restored to fully operational status. In addition, Millcreek reported that procedures have been established and communicated to station staff to ensure that all appropriate EAS receive tests and equipment issues are properly logged and that appropriate entries are entered in the station log indicating reasons why tests were not received.

5. Denver Office Agents also inspected booster station KUUU-FM1 on June 20, 2000. KUUU-FM1 was authorized at that time to operate with 24 watts transmitter output power and an effective radiated power in the horizontal plane of 50 watts with the horizontally polarized antenna and 50 watts with the vertically polarized antenna. In particular, KUUU-FM1 was authorized to operate using two Scala CA5-FM/CP/RM directional antennas with major lobe directions of 50 degrees with 25% power and 135 degrees with 75% power, at a height of radiation center above ground at six meters on a tower located on the east side of the main transmitter building at licensed coordinates N40-39-34, W112-12-06. At the time of inspection on June 20, 2000, KUUU-FM1 was operating with transmitter output power measured at 285 watts and an effective radiated power in excess of 142 watts with one vertically polarized antenna. In particular, KUUU-FM1 was operating using one NiCom non-directional vertical polarized antenna, similar to Model BKG-1/P, at a height of radiation center above ground at approximately 14 meters, on a steel pole on the west side of the main building atop Farnsworth Peak at coordinates of N40-39-35, W112-12-06.

6. Millcreek suspended operation of KUUU-FM1 on the unauthorized antenna at the unauthorized power level immediately after the FCC inspection. Operation of KUUU-FM1 was resumed only after the transmitter was reconnected to the authorized antennas at the authorized height, effective radiated power and transmitted power output.

7. On March 5, 2001, the Denver Office issued a Notice of Violation ("NOV") to Millcreek for station KUUU-FM1's failure at the time of the inspection to operate in accordance with the technical parameters of the translator station license, which included operation with an unauthorized transmitting antenna system, operating at an unauthorized location and operating with excessive effective radiated

power.⁴ On May 2, 2001, Millcreek responded to the NOV. Millcreek acknowledged the violations and stated that a written policy was developed and distributed to the technical personnel stating that all future changes to the station's operating plant must be approved in advance by the station's manager, who will engage as appropriate, the licensee's consulting engineer to ensure that any alterations to the station's transmitting equipment comport with the Commission's Rules. Following the inspection of the booster, Millcreek submitted applications seeking authority to modify the technical parameters of the operation and authority to establish the KUUU-FM1 booster facility as an auxiliary facility.⁵

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁶

9. Commission licensees are responsible for familiarizing themselves and complying with applicable statutes and Commission Rules and policies. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁷ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the general public.⁸ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.⁹

10. Section 11.35(a) of the Rules states that "[b]roadcast stations...are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations

⁴ The Denver Office also issued an NOV on March 2, 2001, to Millcreek for station KUDD-FM1's failure at the time of the inspection to operate in accordance with the authorized technical parameters. KUDD-FM1 was operating at the time of the inspection with only one of the two antennas specified in the authorization.

⁵ See File No. BPFTB-20000626AFE, application for authority to use a non-directional antenna system, granted December 20, 2000 by File No. BLFTB-20000928APN. See also File No. BXPB-20000626AFF, application for construction permit for auxiliary facility, granted September 27, 2000, and File No. BXLH-20010315AAE, license application to cover construction permit of auxiliary facility.

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ 47 C.F.R. §§ 11.11 and 11.41.

⁸ 47 C.F.R. §§ 11.1 and 11.21.

⁹ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

and systems are in operation." Millcreek did not have EAS equipment installed and operational at stations KUUU and KUDD at the time of inspection. Based on the evidence, we find that Millcreek willfully violated Section 11.35 of the Rules by failing to have an operational EAS.

11. In general, the Rules require stations to operate in compliance with applicable technical rules and the terms of the station authorization. Section 74.1251 of the Rules provides that licensees must formally apply to the FCC and be granted permission by the FCC before making a change in the transmitting antenna system including the direction of radiation or directive antenna pattern, a change in the location of the translator or booster except a move within the same building or upon the same pole or tower, a change of authorized effective radiated power and a change in the area being served. At the time of inspection on June 20, 2000, KUUU-FM1 was operating with an unauthorized transmitting antenna system installed at an antenna height exceeding that authorized at a location 1° from its authorized location with excessive effective radiated power and was serving areas outside the principal community to be served. Based on the evidence before us, we find that on June 20, 2000, Millcreek willfully violated Section 74.1251 of the Rules by failing to operate KUUU-FM1 in accordance with the technical parameters of the booster station's authorization.

12. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),¹⁰ and Section 1.80 of the Commissions Rules,¹¹ for EAS equipment not installed or operational is \$8,000, for use of unauthorized equipment is \$5,000, for exceeding authorized antenna height is \$5,000, for exceeding power limits is \$4,000. Application of the base amount to the noted violations results in a total base forfeiture amount of \$22,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,¹² which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require. The violations for which forfeitures are assessed in this NAL are the more serious of the numerous violations of the Rules discovered at the four Millcreek stations at the time of the inspection. Failure to have EAS equipment installed and operational at both of the main FM stations serving a significant area of Utah,¹³ is a serious safety-related rule violation. The significantly overpowered operation of booster KUUU-FM1, which resulted in signal coverage far beyond the 60 dbu (1 mV/m) contour of the main FM station, is a serious violation of the Commission's technical and interference protection rules. Taking all of the evidence, the statutory factors and the *Forfeiture Policy Statement* into consideration, a \$22,000 forfeiture is warranted.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, that Millcreek Broadcasting, L.L.C., is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the

¹⁰ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹¹ 47 C.F.R. § 1.80.

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ KUDD and KUUU both operate under the Wasatch Front Operational EAS Area under the State of Utah EAS plan. KUUU serves the Salt Lake City region and KUDD serves the Ogden region in Utah.

amount of twenty-two thousand dollars (\$22,000) for violations of Sections 11.35 and 74.1251 of the Rules.¹⁴

14. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Millcreek Broadcasting, L.L.C., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

15. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration number (FRN) and the NAL/Acct. No. referenced in the caption.

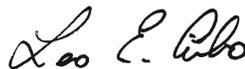
16. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

19. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 4290, Return Receipt Requested, to Millcreek Broadcasting, L.L.C., 980 N. Michigan Avenue, Suite 1880, Chicago, Illinois 60611, and courtesy copied to Shainis & Peltzman, Chartered, Attn: Aaron Shainis, 1850 M Street, NW, Suite 240, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION



Leo E. Cirbo
District Director, Denver Office

¹⁴ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35 and 74.1251.

¹⁵ See 47 C.F.R. § 1.1914.

